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SUBJECT: TERRORISM FINANCE: MALAYSIAN QUESTIONS

REF: KUALA LUMPUR 1399

¶1. Washington agencies appreciate post's dialogue with the Malaysian FIU and provide the following response keyed to questions raised by FIU head Jeremy Lee.

¶2. Post may relay the following response to the GOM:

(1) If a designee's assets are frozen and he believes his designation was in error, what legal recourse does he have?

The procedures for requesting de-listing from the U.N. 1267 Committee are explained in section 8 of the 1267 Committee's guidelines (most recently updated February 12, 2007 and available on the Committee's website, <http://www.un.org/sc/committees/1267>). The 1267 Committee has also published a fact sheet on delisting, which is also available on the Committee's website.

(2) If a government, i.e. Malaysia, has taken action to freeze assets pursuant to UNSCR 1267 designation and the designee challenges the action in a Malaysian court, what legal basis does the Malaysian government have to support its action when it does not have access to the intelligence upon which the designation was made?

This issue would turn on Malaysian law. However, one legal basis that would support such an action by Malaysia is Chapter VII of the U.N. Charter, which, as you know, requires UN Member States to take the necessary measures to carry out the decisions of the UN Security Council adopted under UNSCR 1267 and related resolutions. We would also encourage you to seek clarification or additional information from the Member State that proposed the designation.

(3) What is done with insurance policies which are paid in full? Does a government interfere with the contractual relationship between parties?

Paragraph 1 of UNSCR 1735 (2006) requires Member States to freeze "funds and other financial assets or economic resources" of designees, "including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction" and to "ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons, benefit, by their nationals or by any persons within their territory." Accordingly, UN Member States should block access to any insurance policy in which a designee has a property interest, regardless of whether it has been paid in full, and prohibit payment of claims made on such an insurance policy either directly or indirectly, or for the benefit of, such designees.

(4) If a designee falls behind in his mortgage payments due to the freezing of his assets, does the bank foreclose on his house? It is possible that the very bank that has frozen his assets also might hold his now-delinquent mortgage.

UNSCR 1452 permits Member States to notify the 1267 Committee of their intent to authorize access to frozen assets in order to cover basic expenses (including mortgage payments). The procedures for making such a request are explained in section 9 of the Committee's guidelines (most recently updated February 12, 2007).

(5) What if a designee is de-listed at a later date?

If a designee is de-listed by the 1267 Committee, the sanctions required by UNSCR 1267 and related resolutions would no longer apply to that designee.

(6) If a designee dies, are the funds transferred to his estate?

UN Member States are required to continue to freeze the assets of a designee until the designee has been de-listed by either the Security Council or the 1267 Committee. Death of a designee does not result in automatic delisting. Only after the designee has been de-listed would the sanctions required by UNSCR 1267 and related resolutions cease to apply. Disposition of the assets would then proceed in accordance with domestic law.

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